

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 23 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy of the judgement? No :
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No :
 5. Whether it is to be circulated to the Civil Judge? No :

GANGABEN LAXMIDAS

Versus

BARDANWALA BROTHERS

Appearance:

MR IS SUPEHIA for Petitioner
MR BR SHAH for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 04/04/2000

ORAL JUDGEMENT

1. This is an Appeal against the Award dated 9.3.1982 of the Commissioner of Workmen's Compensation, Jamnagar, dismissing the application of the applicants, who were dependents of the deceased Laxmidas alias

Babubhai Makanji claiming compensation under the provisions of the Workmen's Compensation Act, 1925.

2. The deceased was the husband of the applicant No.1. He was serving in the opponent firm and was doing the work of purchasing and selling the goods, loading the goods and to check the goods, etc. and was drawing salary of Rs.450/- p.m. from the opponents No.1 to 4. On 10.6.1978 the wagons containing tin plates were to arrive from Calcutta to Ahmedabad. It was duty of the deceased to receive delivery of the goods from railway station and to dispatch it to Jamnagar in trucks. On 14.6.1978 the deceased was in the office of Transport Company at Ahmedabad for getting the goods loaded in the truck. It was said that at that time he received massive heart attack because of over work. The deceased was rushed to the V.S.Hospital, Ahmedabad, where he died due to cardio Respiratory Embarrassment. C.V.A. Haemorrhage with peripheral circulatory failure. It was alleged that the deceased received heart-attack because of heavy pressure of work and died in the course of employment. Applicants have claimed Rs.21,000/- as compensation and Rs.10,500/by way of penalty. Notice was served upon the opponents, but with no result, hence the application was moved in the Court below.

3. The allegations were denied by the opponents in their written statement.

4. The Commissioner for Workmen Compensation found that the deceased was workmen within the meaning of the Act, but the accident did not occur in the course of employment of the deceased and that no compensation was liable to be paid nor any penalty or interest was to be paid by the opponents. With these findings the application was dismissed hence this Appeal.

5. Shri I.A.Supehia, learned Counsel for the appellant has been heard. Shri B.R.Shah, learned Counsel for the respondent did not appear though the list was revised four times. The record has been examined so also the judgment under Appeal.

6. Learned Counsel for the appellant has contended that the Court below was in error in placing burden of proof upon the widow of the deceased for proving that the heart of the deceased had become weak due to the work that he was doing with the opponents which ultimately resulted in the death of the deceased. He also pointed out that medical certificate Ex.49 was not at all dealt with by the court below and this was the material

documentary evidence which should have been considered by the Court below.

7. Ex.49 is the medical Certificate from the Superintendent, V.S. General Hospital, Ahmedabad. It was issued on 26.3.1980. The deceased received heart-attack on 14.6.1978 at 3.25 p.m. and expired on the same day within five minutes i.e. at 3.30 p.m. However, examination of Superintendent was not material because in this certificate it was not mentioned that the cardio respiratory embarrassment was caused due to pressure of work or due to over work of the deceased. Moreover this certificate was issued on 26.3.1980 i.e. after about one year and nine months of the so called accident. It was not disclosed in evidence what was necessity of obtaining this certificate at such a late stage. More over this certificate was not proved by the Superintendent and mere placing of exhibit mark on this document will not render it admissible. Consequently failure of the Court below in dealing with this medical certificate will not render the impugned judgment illegal.

8. From the material on record it is established that the deceased was not engaged in manual work nor he was working as labourer for loading and unloading the consignment from railway wagon to the truck. On the other hand he was assigned duty of the clerk and he was supervising the loading and unloading operation from railway wagon to the truck. It could not be established that the deceased who was sitting in the transport office was so much over strained that he received heart attack. Nobody from the transport office was examined who was present at the time the deceased received heart attack, nor is there any indication from the evidence that no body was present in the transport office except the deceased. The widow of the deceased was not an eye witness. Even if the view taken by the court below is ignored that there is no evidence worth the name to show that the heart of the deceased had become weaker due to work, still there is no cogent evidence to connect the cause of death with the course of employment. Consequently even if the deceased was in the course of employment and notional extension of doctrine of course of employment is allowed in the instant case it cannot be said that the cause of accident had any nexus with the employment or work of the deceased. Consequently the court below did not commit any illegality in dismissing the application. I do not find an merit in this Appeal which is liable to be dismissed.

The Appeal is dismissed with no order as to costs.

sd/-

Date : April 04, 2000 (D. C. Srivastava, J.)

sas